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SENATE BILL 253 By
Dixon

HOUSE BILL 320
By Bowers

AN ACT to amend Tennessee Code Annotated, Title 54; Title 55;
Title 65 and Title 68, relative to the transportation of certain
hazardous materials.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-15-126, is amended by deleting
the section in its entirety.

SECTION 2. Tennessee Code Annotated, Title 65, Chapter 15, is amended by adding
the following as new sections to be appropriately designated:

Section _____. As used in this act, the term:

(1) "Agency" means the Tennessee emergency management agency and such
agency shall be officially designated by the department.

(2) "Carrier" means:

(A) Any person engaged in the transportation on the public roads of this
state of goods or property in, to, or through this state, whether or not such
transportation is for hire.

(B) Any railroad company engaged in the transportation of goods or
property in, to, or through this state, whether or not such transportation is for hire.

(3) "Cask" means a package certified by the United States Nuclear Regulatory Commission for the transportation of spent nuclear fuel or high-level radioactive waste.

(4) "Department" means the department of safety.

(5) "Elderly" means age sixty (60) and over.

(6) "High-level nuclear waste" means liquid wastes from reprocessing irradiated reactor fuel, solids into which such liquid wastes have been converted, and any other high-level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.

(7) "Person" means and includes any individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency or instrumentality of the United States government or any other entity and includes any officer, agent, or employee of any of the above.

(8) "Shipper" means any person who arranges for, provides for, solicits a carrier for, consigns to a carrier for, or contracts with a carrier for shipment or transport of goods or property.

(9) "Spent nuclear fuel" means nuclear fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

Section ____.

(a) Notwithstanding any other provision of law to the contrary, any railroad company and any person transporting spent nuclear fuel and high-level nuclear waste on the public roads of this state shall be subject to the requirements of this act.

(b) No person, including the state or any agency thereof, shall transport spent nuclear fuel and high-level nuclear waste in, to, or through this state on the public roads of this state, whether or not the spent nuclear fuel and high-level nuclear waste is for delivery in this state and whether or not the transportation

originated in this state; nor shall any person deliver in this state any spent nuclear fuel and high-level nuclear waste to any person for transportation; nor shall any such person accept any spent nuclear fuel and high-level nuclear waste for transportation in this state without compliance with the following requirements:

Such materials shall be packaged, marked, labeled, handled, loaded, unloaded, stored, detained, transported, placarded, and monitored in compliance with rules and regulations promulgated by the department pursuant to this act. Compliance with such rules and regulations shall be in addition to and supplemental of other regulations of the United States Department of Transportation, United States Nuclear Regulatory Commission, Tennessee department of environment and conservation, and state fire marshal, applicable to such persons.

(c) The department shall promulgate rules and regulations such that no person shall arrange for the transportation of or cause to be transported in, to, or through this state by railroad company or on the public roads of this state any spent nuclear fuel and high-level nuclear waste unless such person shall notify the department or its designee in accordance with such rules and regulations.

(d) Knowledge by a shipper that a carrier proposes to transport spent nuclear fuel and high-level nuclear waste in or through this state on the public roads of this state shall be sufficient contact with this state to subject such shipper to the jurisdiction of the courts of this state with respect to such transport.

(e)

(1) No transportation of spent nuclear fuel and high-level nuclear waste shall take place in or through this state until the department or the agency as its designee issues a permit authorizing the applicant to operate or move upon the state's public roads a motor vehicle or

combination of vehicles which carry spent nuclear fuel and high-level nuclear waste or authorizing the applicant to operate or move upon railroads within the state any locomotives, railroad cars, or combinations thereof which carry spent nuclear fuel and high-level nuclear wastes. The department or the agency as its designee may require changes in the proposed dates, times, routes, detention, holding, or storage of such materials during transport as necessary to maximize protection of the public health, safety, welfare, or the environment. The department is authorized to promulgate reasonable rules and regulations which are necessary or desirable in governing the issuance of permits, provided that such rules and regulations are not in conflict with other provisions of law.

(2) With respect to shipment of spent nuclear fuel or high-level nuclear waste, the department shall require as a condition of any permit, to the extent not inconsistent with federal law, the following:

(A) Each permit application and permit shall contain documentation of the carrier's federal safety rating, proof of all liability insurance including federally required liability insurance, and a nuclear incident prevention plan and a cleanup plan acceptable to the department and containing at least the following:

(i) Identification of each route and shipment to which such permit is applicable;

(ii) Identification of emergency response personnel and resources available along each route;

(iii) The name, address, and emergency response training record of emergency response personnel to accompany each shipment; and

(iv) Identification of foreseeable accident and shipment disruption scenarios, including worst-case scenarios, and written response scenarios applicable to each such accident or disruption scenario. Accident and disruption scenarios shall include estimates of the direct costs and economic impact of each identified occurrence and the potential health and welfare impact of such accident or disruption on the elderly population. Response scenarios shall include estimates of the direct costs and economic impact of each identified response.

(B) Each permit application and permit shall specify the route to be followed for each shipment covered by such permit. The carrier shall not deviate from the routes designated in the permit except to make local pickups and deliveries or when emergency conditions would make continued use of the designated route unsafe or to refuel or when the designated route is closed due to road or rail conditions, road or rail construction, or maintenance operations. Any deviation from the designated permit route shall be reported at the earliest practicable time to the agency;

(C) Routes identified on such applications and permits must be consistent with all applicable state and federal laws and regulations, and each route must be the safest practicable route calculated to minimize the potential exposure of elderly persons and members of the public to the shipment while maximizing availability of emergency response personnel and resources along

the route. Calculations, weight criteria, and other information utilized by the carrier in the identification of the safest practicable route shall be attached to the application. The department, to the extent practicable, shall restrict spent nuclear fuel or high-level nuclear waste shipments to limited access roads and to portions of rail lines outside of corporate limits of cities and shall require avoidance of standard metropolitan statistical areas having a population of one hundred thousand (100,000) or more according to the United States decennial census of 1990 or any future such census. The department shall conduct at least one (1) public hearing on each proposed shipment route before approval thereof and shall submit each proposed route to the senate and house transportation committees and to each member of the general assembly whose district includes any part of such route. Final approval by the department shall be for a period of the shorter of five (5) years or until changes in the conditions prevailing on such route render it no longer the safest practicable route and its use is discontinued by order of the department;

(D) Each permit application and permit shall list the number of casks of spent nuclear fuel or high-level nuclear waste to be shipped under said permit and shall identify the type and quantity of material contained in each cask, the origin and destination of each cask, and the identifying serial number of each cask; and

(E) The department is authorized to issue annual permits to carriers which provide advance information on shipments for the coming year.

(f) Every such permit shall be carried in the vehicles or combination of vehicles or train to which it refers and shall be open to inspection by any law enforcement officer or employee of the department who has been given enforcement authority by the department.

(g) Every permit issued for the transportation of spent nuclear fuel or high-level nuclear waste shall require that such material be transported in convoys of not less than five (5) cask-bearing trucks, escorted by emergency response personnel provided by the carrier or the shipper, unless the department, for reasonable cause shown and in the interest of safety, shall in writing waive such convoy requirements. Every permit issued for the rail transportation of spent nuclear fuel or high-level nuclear waste shall require that such material be transported in a train dedicated solely to such shipment. The emergency response personnel shall include at least three (3) individuals having one (1) or more years of training in medical responses to irradiation of humans.

(h) All carriers of spent nuclear fuel or high-level nuclear waste are required to notify the agency twenty-four (24) hours prior to the transportation of spent nuclear fuel or high-level nuclear waste within the state, identifying the permit under which such fuel or waste shall be shipped and the origin, destination, and place and approximate time of entry into and exit from the state, as appropriate.

(i) For just cause, including, but not limited to, repeated and consistent past violations, the department may refuse to issue or may cancel, suspend, or revoke the permit of an applicant or permittee.

(j)

(1) The department or the official designated by the department, pursuant to this section and the rules and regulations developed by the department, may issue an annual permit which shall allow vehicles or trains transporting spent nuclear fuel and high-level nuclear wastes to be operated on the public roads of this state or this state's railways for twelve (12) months from the date the permit is issued.

(2) The department or the official designated by the department, pursuant to this section, and the rules and regulations developed by the department may issue a single-trip permit to any vehicle or train.

(k) The department shall charge a fee for the issuance of permits. Annual trip permits previously issued by the department of environment and conservation shall be valid until the date of expiration shown on the permit unless canceled, suspended, or revoked prior to the date of expiration by the department. The fee for the issuance of single-trip permits for spent nuclear fuel and high-level nuclear waste other than spent nuclear fuel or high-level nuclear waste shall be established by rules and regulations promulgated by the department. For shipments of spent nuclear fuel or high-level nuclear waste, the department shall charge an annual permit fee of five hundred dollars (\$500), but there shall be an additional fee payable at the time and under the circumstances set forth in this subsection of two thousand dollars (\$2,000) per cask to be shipped under the annual permit, to be paid by the owner of the shipment for the purpose of defraying the expenses of this state incurred in inspection, regulation, and management involving such shipments. The shipment fee for spent nuclear fuel or high-level nuclear waste shall be paid either by mail, in which case it must be postmarked at least seven (7) days before the shipment is made, or at the

time of the vehicle or train inspections provided for in this section. Failure to pay such fee shall subject the carrier and the owner of the shipment to a civil action for the recovery of the amount of such fee, plus costs and a reasonable attorneys' fee, for which the carrier and owner shall be jointly and severally liable. Such action may be filed in the chancery court of Davidson County or in the chancery court of the county in which the shipment originated or in which it was or should have been inspected pursuant to this section. Operating a motor vehicle or train engaged in the transportation of spent nuclear fuel or high-level nuclear waste on the public highways of this state or the railroads within this state shall constitute submission to the jurisdiction of the courts of this state for the purposes of such an action.

(I) All vehicles carrying spent nuclear fuel or high-level nuclear waste entering the state on the public highways shall be inspected by personnel designated by the department at the port of entry weigh station nearest the point at which the shipment enters the state or at a location specified by the department. All trains carrying spent nuclear fuel or high-level nuclear waste entering the state shall be inspected by personnel designated by the department at a location specified by the department. Vehicles and trains carrying shipments originating within the state shall be inspected at the point of origin by personnel designated by the department. All such inspections shall require the vehicle or, if applicable, the train to conform to all applicable federal motor carrier safety regulations and all applicable federal hazardous materials regulations, and in the event that the United States Department of Energy adopts the Enhanced North American Standard Inspection for Transportation of Radioactive Materials, to the requirements of those standards.

(m) For the purposes of this chapter, the department is expressly authorized to contract with the department, the Tennessee emergency management agency, the department of environment and conservation, the department of transportation, or other state agencies or departments to perform any activities necessary to implement this act. The department is authorized and directed to cooperate with the department of environment and conservation in promulgating regulations for the coordinated implementation of this act, and Title 68, Chapter 212.

(n) Notwithstanding any other provisions of this act, the department is authorized to establish such exceptions or exemptions from the requirements of this act, or any provision hereof, for such kinds, quantities, types, or shipments of spent nuclear fuel and high-level nuclear waste as it shall deem appropriate, consistent with the protection of the public health, safety, and welfare.

(o) This act shall not apply to the transportation, delivery, or acceptance for delivery of radioactive materials inside the confines of the authorized location of use of any person authorized to use, possess, transport, deliver, or store radioactive materials by the United States Nuclear Regulatory Commission; nor shall this chapter apply to the transportation, delivery, or acceptance for transportation of radioactive materials under the direction or supervision of the United States Nuclear Regulatory Commission of the United States Department of Defense where such transportation, delivery, or acceptance for transportation is escorted by personnel designated by or under the authority of those agencies.

(p) This act shall not apply to interstate pipeline facilities which are subject to the jurisdiction of the United States Department of Transportation under the Natural Gas Pipeline Safety Act of 1968.

(q) In the event of any damage to state property or any discharge of spent nuclear fuel and high-level nuclear waste from the authorized shipping package or container or any threat of such discharge which results from the transportation, storage, holding, detention, delivery for transportation, or acceptance for transportation of spent nuclear fuel and high-level nuclear waste in this state, the state may recover from any shipper, carrier, bailor, bailee, or any other person responsible for such storage, transportation, holding, detention, delivery, or acceptance all costs incurred by the state in the reparation of the damage and all costs incurred in the prevention, abatement, or removal of any such discharge or threatened discharge, including reasonable attorneys' fees incurred with respect to recovery.

(r) Notwithstanding any other provision of law, a bond or indemnity insurance required of carriers shall be established by rules and regulations of the department and shall for all persons subject to this act, whether intrastate or interstate carriers, be at least in the maximum amount or amounts authorized or required by federal law or regulations. The department shall require applicants for permits for the transportation of spent nuclear fuel or high-level nuclear waste, as a condition of the granting of any such permit, to obtain a bond or indemnity insurance in at least the amount of twenty-five million dollars (\$25,000,000).

(s) In addition to any other liability imposed by law, any person who violates any provision of this act shall be guilty of a Class A misdemeanor.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take July 1, 2001, the public welfare requiring it.